

# Exhibit 11



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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CIVIL COMPLEX LITIGATION CENTER

SEP 07 2011

ALAN CARLSON, Clerk of the Court  
*W. Adams*  
BY W. ADAMS

9 Attorneys for Plaintiff  
10 (Other Counsel for Plaintiff Listed on Signature Page)

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF ORANGE

10 DARRYL D. HENRY, individually and on  
11 behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 STRUCTURED INVESTMENTS CO., LLC, a  
15 California Limited Liability Company,  
16 RONALD STEINBERG, individually and d/b/a  
Retired Military Financial Services, and  
STEVEN P. COVEY, individually and d/b/a  
Retired Military Financial Services,

17 Defendants.

18 Case No. 05CC00167

**PROPOSED STATEMENT OF  
DECISION ON PHASES 2 AND 3 OF  
BIFURCATED TRIAL**

Judge: David C. Velasquez  
Dept.: Not Currently Assigned

19 AND RELATED CROSS-ACTIONS

1                   Phases Two and Three of the trial in the action having come on regularly for trial on May 2,  
 2 2011, in Departments CX-101, CJC-9 and CJC-17 of the Orange County Superior Court, before the  
 3 Hon. David C. Velasquez, judge presiding; and the parties present with counsel as follows: the  
 4 plaintiff, represented by Robert M. Bramson and Jennifer S. Rosenberg of the Law Offices of  
 5 Bramson, Plutzik, Mahler & Birkhaeuser and Stuart Rossman of the National Consumer Law  
 6 Center; the defendant Structured Investments Co., Inc. ("SICO"), represented by Brett M. Rubin,  
 7 of the Law Offices of Rubin & Gross; and defendants Ronald Steinberg and Steven Covey,  
 8 represented by Robert L. Clarkson of the Law Offices of Clarkson and Riley; and

9                   The parties having stipulated that the court may hear Phases Two and Three of the trial  
 10 simultaneously on the following causes of action:

11                   The First Cause of Action (declaratory relief), the Second Cause of Action (violation of  
 12 Business & Professions Code §§17200, *et seq.* ("UCL")), the Third Cause of Action (usury), and  
 13 the Fifth Cause of Action (money had and received) on the following issues:

14                   (1) whether the Agreements between the parties are illegal assignments under federal law,  
 15 to wit, 38 USC §5301 and 37 USC §701; (2) whether the Agreements are loans; (3) if the  
 16 Agreements are loans, whether the loans are usurious; (4) whether the Agreements are unlawful or  
 17 unfair under the UCL; (5) whether the Agreements are unconscionable; and (6) the relief to which  
 18 the class is entitled if any; and

19                   THE COURT:

20                   Having previously ordered the matter certified as a class action for the class defined as  
 21 follows:

22                   All retired enlisted military personnel, within the provisions of 37 USC  
 23 §701(c), or disabled military personnel of any rank, within the provisions of  
 24 38 USC §5301, subsections (a)(1) and (3)(A), who: (1) on or after August 4,  
 25 2001, entered an "Annuity Utilization Agreement" regarding benefits  
 26 covered by the above subsections which contain the same or substantially  
 27 the same terms and conditions, alleged herein to be unfair, illegal, improper  
 28 or deceptive, as the agreement executed by the plaintiff (Exhibit 2 to the  
 declaration of Darryl D. Henry in support of motion for class certification),  
 and who paid any money or parted with anything of value as a term or  
 condition of the Agreement; or (2) on or after August 4, 2003, either made or  
 has yet to make a final payment pursuant to the above-described  
 "Annuity Utilization Agreement." Excluded from the class are all persons  
 who have previously obtained a judgment or compromised any cause of

1 action of the type alleged against the defendants in the instant action, or who  
2 have executed releases or waivers precluding such causes of action against  
the defendants. (Minute Order dated May 22, 2008.)

3 THE COURT FURTHER:

4 Having seen, read and considered the evidence received in the trial; and

5 Having received, read and considered the trial briefs submitted by the parties; and

6 Having heard and considered the arguments of counsel; and

7 On July 14, 2011, the parties having submitted the matter for ruling by the court:

8 THE COURT DECLARES THE RIGHTS OF THE PARTIES AS FOLLOWS:

9 Whether the Agreements between the parties are illegal  
10 assignments under federal law, to wit, 38 USC §5301 and 37  
USC §701

11 The court finds the Agreements under either of the governing statutes at issue herein are  
12 assignments. The court reaches that decision after analyzing the facts according to the more liberal  
13 and broad standard of statutory interpretation given to remedial statutes rather than by a traditional  
14 approach to deciding whether the Agreements are assignments. In addition, the Agreements  
15 governed by 38 USC §5301 are assignments based upon the particular provisions of that statute.

16 Title 37 USC §701 provides in pertinent part as follows:

17 "(c) An enlisted member of the Army, Navy, Air Force, or Marine Corps may not assign his  
18 pay, and if he does so, the assignment is void."

19 Section §701 does not further define the term "assign" or "assignment." Generally the term  
20 "assignment" refers to a transaction resulting in the immediate transfer of property for  
21 consideration. "Assignment is a term that may comprehensively cover the transfer of title to any  
22 kind of property." (1 Witkin, Summary 10th (2005) Contracts, § 707, p. 793. See also Civil Code  
23 §1039.) An assignment may involve the "transfer or making over to another of the whole of any  
24 property, real or personal, in possession or in action, or of any estate or right therein." (Black's Law  
25 Dictionary (Revised 4th edition.) "While no particular form is required, it 'must be a manifestation  
26 to another person by the owner of the right indicating his intention to transfer, without further  
27 action or manifestation of intention, the right to such other person, or to a third person.'" (1 Witkin,  
28 Summary 10th (2005) Contracts , § 709, p. 795.) "An assignment carries with it all rights of the

1 assignor." (1 Witkin, Summary 10th (2005) Contracts, §734, p. 817.) "The assignment merely  
 2 transfers the interest of the assignor. The assignee "stands in the shoes "of the assignor, taking his  
 3 or her rights and remedies, subject to any defenses that the obligor has against the assignor prior to  
 4 notice of the assignment" (1 Witkin, Summary 10th (2005) Contracts , § 735, p. 819.) The court  
 5 finds that none of the Agreements is an assignment according to the customary criteria stated  
 6 above. Although the court finds that the instant transactions resulted in the class  
 7 members immediately granting to SICO the right to receive the class members' government  
 8 benefits for consideration - a fact of great importance when the court considers the remedial nature  
 9 of the governing statutes – the transactions did not include the transfer of the other rights which  
 10 normally accompany an assignment - such as right of SICO to directly sue the government to  
 11 enforce the rights under the pensions. Nonetheless, the very nature of the transactions as embodied  
 12 in the written Agreements manifests the intention of the parties to transfer to SICO all control over  
 13 the class members' rights to receive their government benefits.

14 The salient terms of the Agreements provide as follows:

15 "AUA Recitals §1

16 "Participant [class member] is entitled to receive a stream of periodic payments on a  
 17 monthly, quarterly or annual basis . . ."  
 18 "A. SICO . . . [has] developed a program (herein referred to as the "Annuity Utilization  
 19 Plan") through which persons who are entitle to receive periodic payments over a period of  
 time can receive a lump sum payment in exchange for their agreement to remit a specified  
 number of such periodic payments to SICO immediately upon receipt thereof. This contract  
 is not a loan. Other than specified there are no termination provisions in this agreement.

20 "NOW, THEREFORE, in consideration of the foregoing recital . . . the parties hereto agree  
 21 as follows:

22 "1. Lump Sum Payment to Participant. In exchange for Participant's promise, as set forth in  
 23 Section 2 hereof, to remit the Periodic Payments to SICO immediately upon receipt thereof  
 as provided herein, (i) SICO shall pay to Participant upon the execution of this Agreement  
 24 [\$ sum] herein referred to as the "Lump Sum Payment."

25 The Agreement continues:

26 "2. Remittance of the Periodic Payments

27 "2.1 Definition of the Periodic Payments. SICO is entering into this Agreement in reliance  
 upon . . . (ii) Participant's covenants contained herein, including Participant's covenant to  
 take all such action as may be necessary to ensure that all of such periodic payments are  
 received by Participant in the amounts represented and warranted to SICO, and (iii)

Participant's agreement to remit each such periodic payment to SICO immediately upon receipt thereof as required hereby. . . ." (Underscore added for emphasis.)

Section 2.3 of the Agreements provides:

"Establishment of the Deposit Account. Without limiting the generality of Participant's unconditional promise to remit the Periodic Payments to SICO immediately upon receipt thereof, Participant has executed a letter of instruction to the payor of the Periodic Payments instructing such payor to mail Participant's checks representing the Periodic Payments (or send the Periodic Payments by electronic means) for deposit into Participant's Account (herein referred to as the "Deposit Account") which has been opened at the bank designated by SICO. Participant has taken all steps to open the Account and to provide that withdrawals from the Account may only be made with the signatures of two of the following persons (and can be made with any two such signatures): Participant and two persons designated by SICO. Without limiting in any way the absolute and unconditional obligation of Participant to cause the Periodic Payments to be deposited into the Account as provided in this Section 2, Participant further covenants and agrees that, to the extent any Periodic Payment is not so deposited but otherwise comes under dominion and control (for example, if a check representing a Periodic Payment is mailed to Participant rather than being deposited into the Account), Participant will immediately take any and all necessary action to cause such Periodic Payment to be deposited into the Account."

Further, the Agreements state:

**"6. Grant of Security Interest.** Participant hereby grants to SICO a perfected, first priority security interest in the Deposit Account and in any other account in which the Periodic Payments may at any time be deposited in order to secure the performance of Participant's obligations under this Agreement. Participant agrees to execute any and all other documents and agreements and to take any and all actions with respect thereto as may be necessary or desirable in order to maintain SICO's security interest as an enforceable, first priority perfected security interest."

The Agreements also provide:

"8. Grant of Power of Attorney. . . with full power . . . to take any and all necessary and lawful actions to cause all of the Periodic Payments to be remitted to SICO. . . to cause all or a portion of any Periodic Payment deposited into the Deposit Account or otherwise coming into the dominion and control of either of them (Covey/Steinberg) (i) to be remitted to SICO . . . ."

This court acknowledges that lacking in the Agreements are provisions the class members granted to SICO all of the rights which would ordinarily accompany a typical assignment. For example, it is true that SICO would not "stand in the shoes" of the class members to directly enforce against the government their rights and remedies if the government defaulted in its obligations under the benefits programs. (See 1 Witkin, Summary 10th (2005) Contracts, *supra*.) However, the court finds that SICO was aware that if it had structured the Agreements in a manner whereby all of the class members' rights accompanying the pensions were transferred to SICO – in

1 other words, a classic assignment – the government would not recognize the transfer. That is why  
 2 the class members directed the government to deposit the pension payments in the joint accounts,  
 3 but did not otherwise inform the government of the existence of the Agreements. SICO understood  
 4 the anti-assignment provisions of 38 USC §5301 and 37 USC §701 prohibited the assignment of  
 5 benefits. It therefore structured the transactions to provide itself with the primary benefits of  
 6 assignments without openly calling the transactions assignments.

7 In the present case, the statutes at issue were passed to insure that retired and disabled  
 8 military personnel actually receive the benefits provided to them and to prevent them from being  
 9 lost through either the predation of others or their own poor judgment. (Cf. McCarty v. McCarty  
 10 (1981) 453 U.S. 210, 229; Moorhous v. Dorfman (4th Cir. 1997) 108 F.3d 51, 511-56; Lande v.  
 11 Jurisich (1943) 59 Cal.App.2d 613; and San Jose v. Forsythe (1968) 261 Cal.App.2d 114.)  
 12 According to the Agreements, the pensions never actually reached the class members. Instead, the  
 13 Agreements provide that a perfected immediate right to possession of the pension and disability  
 14 payments arises the moment the benefits are deposited in the joint bank accounts, which are  
 15 completely within SICO's control.

16 Thus, the court finds that the purposes of the law governing the anti-assignment provisions  
 17 of 38 USC §5301 and 37 USC §701 would be thwarted if the court required all of the traditional  
 18 elements of assignments to be present before calling the transactions assignments. In light of that  
 19 conclusion, the court chooses to follow the rule of statutory interpretation that remedial statutes are  
 20 to be interpreted broadly to protect the purposes for which the law was enacted by the legislature.  
 21 (See Norfolk Redevelopment etc., v. Chesapeake Potomac Tel. Co. (1983) 464 U.S. 30, 36.)

22 According to the Agreements, the benefits were to be paid to an account in the name of the  
 23 class member under the promise by the class member that he or she would remit the monthly  
 24 benefits to SICO as soon as they were paid to the class members. However, the payments were  
 25 never actually "remitted" by the class member to SICO because the class member never had  
 26 effective control over the pension payments. The pension benefits were deposited directly by the  
 27 government into the joint bank account controlled by SICO under the provisions of §§6 and 8 of  
 28 the Agreements. Under those provisions SICO claims "a perfected, first priority security interest in

1 the Deposit Account and in any other account in which the Periodic Payments may at any time be  
 2 deposited in order to secure the performance of Participant's obligations under this Agreement."  
 3 The class members promised "to execute any and all other documents and agreements and to take  
 4 any and all actions with respect thereto as may be necessary or desirable in order to maintain  
 5 SICO's security interest as an enforceable, first priority perfected security interest." Moreover the  
 6 class members granted to SICO a "full power" of attorney "to take any and all necessary and lawful  
 7 actions to cause all of the Periodic Payments to be remitted to SICO . . . to cause all or a portion of  
 8 any Periodic Payment deposited into the Deposit Account or otherwise coming into the dominion  
 9 and control of either of them (Covey/Steinberg) (i) to be remitted to SICO."

10 The defendants argued at trial that the class members still maintained control over the joint  
 11 bank account because the class member had the power to order the government to re-direct the  
 12 deposits to another bank account. But, to do so would constitute a breach by the class members of  
 13 the Agreements under §§2.3, 6 and 8. As stated above, §2.3 of the Agreements provides, "Without  
 14 limiting in any way the absolute and unconditional obligation of Participant to cause the Periodic  
 15 Payments to be deposited into the Account. . . Participant further covenants and agrees that, to the  
 16 extent any Periodic Payment is not so deposited . . . Participant will immediately take any and all  
 17 necessary action to cause such Periodic Payment to be deposited into the Account." It may be true  
 18 that as far as the government was concerned, the class member could change banks, but the  
 19 opposite was true as far as SICO was concerned under the Agreements.

20 And, in any event, SICO's "full power of attorney" permitted it to control where the pension  
 21 benefits were deposited without resort to court process or the assistance of the class members if  
 22 class members changed banks without SICO's consent.

23 In their defense of the issue whether the Agreements constitute assignments, among other  
 24 things, the defendants contend they were merely "buying a stream of income" and did not intend to  
 25 create an assignment of the class members' government benefits. In support of this argument the  
 26 defendants produced evidence at trial that the class members were presented with literature,  
 27 correspondence and advertising representing that SICO's program was a "purchase" of income –  
 28 matters extraneous to the written Agreements.

1           Where a written contract represents the full agreement of the parties, the court will not  
 2 consider extraneous matters which contradict the contract's express terms. In the present case, the  
 3 court finds that such representations that the Agreements constitute "purchases" – and not  
 4 "assignments" - were made before the contract was signed and are not part of the express  
 5 provisions of the written Agreements. Such earlier representations are matters which never became  
 6 part of the written Agreements and are clearly contradictory to the effect of the specific provisions  
 7 of the Agreements, even those Agreements re-named "Purchase and Sale Agreements."

8           This court uses the objective test in contract interpretation. "A contract must be so  
 9 interpreted as to give effect to the mutual intention of the parties as it existed at the time of  
 10 contracting, so far as the same is ascertainable and lawful." (Civil Code §1636; 1 Witkin, Summary  
 11 10th (2005) Contracts, § 744, p. 830.) "The modern approach, however, is to avoid the terminology  
 12 of "intention," and to look for expressed intent, under an objective standard." (Id., citing many  
 13 cases.) "Similarly, it is said that the rules of interpretation of written contracts are for the purpose  
 14 of ascertaining the meaning of the words used therein; evidence cannot be admitted to show  
 15 intention independent of the instrument. [¶]However, if it is shown that the words were used to  
 16 conceal rather than to express the true intent of the parties, the court will look through the form to  
 17 the substance. Typical situations arise where an illegal object is concealed by apparently lawful  
 18 terms . . ." (Id., emphasis added.)

19           It is clear to this court that the defendants meant to characterize the Agreements as anything  
 20 other than assignments (or loans) to protect their interests if called upon to enforce the Agreements  
 21 or protect themselves against the bankruptcy of the pensioner as the events presented themselves.  
 22 Sometimes the defendants called the Agreements assignments, other times they called them loans,  
 23 and, most recently, the defendants called them "purchases" depending upon whatever suited their  
 24 purpose at the time.

25           Furthermore, the self-serving caption of "Purchase and Sale Agreement" is insufficient to  
 26 change the character of the Agreements. In interpreting a contract, the court should look to the full  
 27 substance and effect of the agreement and is not bound by conclusory captions in the written  
 28 document.

Characterizing the transactions as a "sale" is of no help to the defendants. A sale in some circumstances may be very much like an assignment where it involves the transfer of property for consideration, for example, the sale of an ongoing corporation including an assignment of rights and the assumption of obligations. (9 Witkin, Summary 10th (2005) Corp, §§16 and 17.) While it is true that not all assignments are sales, it is also true that some sales are assignments in effect.

**The Agreements governed by 38 USC §5301 are assignments**

As an additional basis to the finding that the Agreements governed by the provisions of 38 USC §5301 are assignments, the court also finds the Agreements are assignments based also on the particular statutory provisions of that statute. Section §5301 provides in pertinent part:

"(a)(1) Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law . . . ."

"(3)(A) This paragraph is intended to clarify that, in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive such benefit by payment of such compensation, [or] pension. . . including deposit into a joint account from which such other person may make withdrawals, or otherwise, such agreement shall be deemed to be an assignment and is prohibited." "....

"(C) Any agreement or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also prohibited and is void from its inception."  
(Emphasis added.)

As stated earlier by this court, §5301 is a remedial statute and thus should be liberally construed. Accordingly, the provisions of the Agreements concerning the creation of the joint deposit accounts constitute "collateral for security" in connection SICO's acquiring "for consideration the right to receive such benefit by payment of such compensation, [or] pension." The deposit accounts are clearly security devices meant to collateralize the repayment of the "Lump Sum" payment. Firstly, §6 of the Agreement explicitly states that SICO is granted "a perfected, first priority security interest in the Deposit Account and in any other account in which the Periodic Payments may at any time be deposited in order to secure the performance of Participant's obligations under this Agreement." Secondly, the practical effect of requiring two signatures to withdraw funds from the joint deposit account, one of which must be a person

1 designated by SICO, is to insure that SICO controls all withdrawals. For all of the above  
 2 reasons, the court finds that the Agreements are prohibited assignments under §5301.

3 **The provisions of the 2003 amendment of 38 USC §5301 operate**  
 4 **retroactively**

5 An exception to the general rule that amendments to statutes operate only prospectively, is  
 6 the rule concerning "clarifications" to existing statutory language. (Levy v. Sterling Holding Co.,  
 7 LLC (3rd Cir. 2008) 544 F.3d 493, 506.) In our case, the language of the amendment expressly  
 8 states Congressional intent that the 2003 amendment was deemed a "clarification" of the provisions  
 9 of §5301 in place when the statute was enacted.

10 **The assignments are unlawful and unfair and violate the UCL**

11 Firstly, because the Agreements violate federal law, they are unlawful under the unlawful  
 12 prong of the UCL. Secondly, because the defendant SICO used the unlawful Agreements to obtain  
 13 the class members' government benefits which the law meant to protect, and mischaracterized the  
 14 true nature of the Agreements, the defendant's "program" constitutes a sharp practice and is unfair  
 15 within the meaning of the UCL.

16 The court finds the defendant's practice is unscrupulous and substantially injurious to  
 17 consumers in general and to the members of the class in particular. The court can find no lawful  
 18 utility to SICO's program of acquiring the pension payments of the class members through the use  
 19 of its unlawful conduct.

20 The court further finds and declares that the Agreements as described in the class definition  
 21 are prohibited and unenforceable.

22 The court hereby finds that the plaintiff and the class are entitled to injunctive relief  
 23 enjoining SICO, and its agents, employees, officers, directors, and any person or entity working in  
 24 concert with it from using the Agreements. However, the court will reserve issuing the injunction  
 25 and defer any further statement of the terms and conditions of the injunction until all of the  
 26 evidence in the case has been presented for the court's consideration in the next phase of the trial.  
 27 The court does not in this Statement of Decision intend to limit itself from including more  
 28 comprehensive, extensive or specific terms and conditions than is here stated in any injunction it

1 fashions at the end of the trial.

2 The court finds that the plaintiff and the class are entitled to restitution in the amount SICO  
 3 collected from the class members in excess of the "Lump Sum" payment within the four year  
 4 period prior to the filing of the instant action, in the sum of \$2,927,619.81.

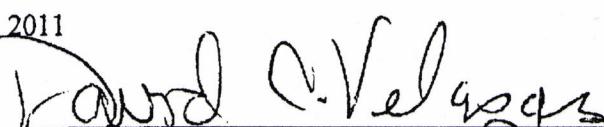
5 **Whether the Agreements between the parties are loans**

6 The court finds the Agreements are not loans. A loan is a promise to repay a certain sum of  
 7 money with or without interest. "A loan of money is a contract by which one delivers a sum of  
 8 money to another, and the latter agrees to return at a future time a sum equivalent to that which he  
 9 borrowed." (Civil Code §1912.) A loan does not involve a transfer of rights or property. Therefore,  
 10 the court's finding above that the Agreements are assignments would be inconsistent with a finding  
 11 the Agreements are loans. The court, having found the Agreements are assignments, finds they  
 12 cannot be loans. For that reason the Third Cause of Action and the Fifth Cause of Action are  
 13 dismissed.

14 **Whether the individual defendants are directly liable**

15 The court finds the plaintiff has not carried his burden to prove the individual defendants  
 16 are directly liable. The plaintiff has not shown by a preponderance of the evidence that either of the  
 17 individual defendants in connection with the pertinent facts herein acted in a capacity other than as  
 18 agents of the corporation.

19 Dated: 9-7 2011

20   
 21 Judge of the Superior Court